

No. 22-16195

**IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

MATHEW K. HIGBEE
AND HIGBEE & ASSOCIATES, APC,
Counterclaim Defendant-Appellant,
v.

4INTERNET, LLC,
Counterclaim Plaintiff-Appellee.

On Appeal from the United States District Court
for the District of Nevada
Hon. Jennifer A. Dorsey
No. 2:18-cv-02097

**MOTION FOR AN EXTENSION TO FILE AN OPENING BRIEF;
DECLARATION OF RYAN E. CARREON**

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Attorneys for Counterclaim Defendant-Appellant

MOTION FOR EXTENSION OF TIME

Appellants Mathew K. Higbee and Higbee & Associates, APC (collectively “H&A”) hereby files this unopposed request to extend the deadline for their opening brief to April 21, 2023. No previous extensions have been requested.

On January 18, 2023, H&A timely filed the instant appeal. On January 25, 2023, the appeal was docketed with H&A’s opening brief due on March 27, 2023. However, due to a calendaring error, H&A’s administrative staff accidentally calendared the due date as March 28, 2023, one day after the brief was actually set to be due. Declaration of Ryan E. Carreon (“Carreon Decl.”) ¶5.

Relying on the incorrectly calendared date, counsel for H&A filed a streamlined request for an extension on March 28, 2023, requesting that the opening brief deadline be extended by 25 days to April 21, 2023, in order to accommodate the birth of my daughter. Carreon Decl. ¶6. Two hours later, counsel received an email stating that the streamlined request had been denied because the request was late and that an extension would only be granted upon the filing of a formal motion. Carreon Decl. ¶7

After further investigation, counsel realized the calendaring error and contacted opposing counsel to see if he would oppose a formal motion for an extension. Opposing counsel stated that he would consent to the requested extension. Carreon Decl. ¶8.

The specific items required by 9th Cir. R. 31-2.2(b) are addressed in the Declaration of Ryan E. Carreon submitted herewith.

For the foregoing reasons, Appellants Mathew K. Higbee and Higbee & Associates APC respectfully request that the deadline for its opening brief to April 21, 2023.

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Dated: March 28, 2023

Respectfully submitted,

/s/ Ryan E. Carreon
Ryan E. Carreon, Esq.
Cal. Bar No. 311668
HIGBEE & ASSOCIATES
1504 Brookhollow Dr., Ste 112
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DECLARATION OF RYAN E. CARREON

I, Ryan E. Carreon, declare as follows:

1. I am over the age of 18 years old. I am an attorney at law admitted to practice in the State of California, and am a member of the bar of this Court. I have personal knowledge of all matters stated herein, and if called as a witness, I could and would competently testify thereto.

2. I am the attorney for Appellants Mathew K. Higbee and Higbee & Associates, APC (collectively “H&A”).

3. On January 18, 2023, H&A timely filed the instant appeal.

4. On January 25, 2023, the appeal was docketed with H&A’s opening brief due on March 27, 2023.

5. Due to a calendaring error, my administrative staff accidentally calendared the due date as March 28, 2023, one day after the brief was actually set to be due.

6. Relying on the incorrectly calendared date, I filed a streamlined request for an extension on March 28, 2023, requesting that the opening brief deadline be extended by 24 days to April 21, 2023 in order to accommodate the birth of my daughter.

7. Two hours later, I received an email stating that the streamlined request had been denied because the request was late and that an extension would only be granted upon the filing of a formal motion.

8. After further investigation, I realized the calendaring error and contacted opposing counsel to see if he would oppose a formal motion for an extension. Opposing counsel stated that he would consent to the requested extension.

9. Pursuant to 9th Cir. R. 31-2.2(b) I make the following declaration.

10. *When the brief is due, 9th Cir. R. 31-2.2(b)(1).* Appellants’ Opening Brief was due on March 27, 2023.

11. *When the brief was first due, 9th Cir. R. 31-2.2(b)(2).* As no prior request for an extension had been sought, Appellants' Opening Brief was originally due on March 27, 2023.

12. *The length of the requested extension, 9th Cir. R. 31-2.2(b)(3).* Appellants request an additional 25 days to file their Opening Brief and Excerpts of Record, which would make Appellants' opening brief due on April 21, 2023.

13. *The reason an extension is necessary, 9th Cir. R. 31-2.2(b)(4).* I intended to timely request a streamlined extension to accommodate the birth of my daughter, however due to the calendaring error discussed above, the streamlined request was denied as untimely necessitating the filing of this Motion.

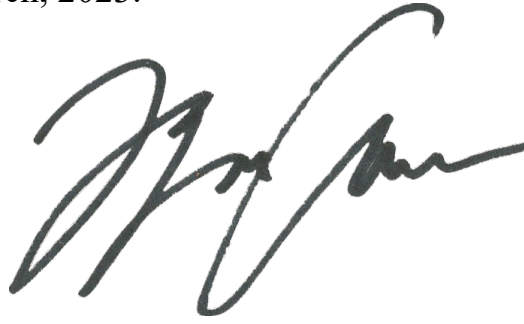
14. *Movant's representation that movant has exercised diligence and that the brief will be filed within the time requested, 9th Cir. R. 31-2.2(b)(5).* This Motion is made in good faith and for the reasons identified herein. Appellants have exercised due diligence prosecuting this matter, and Appellants' Opening Brief will be filed within the time requested herein, April 21, 2023.

15. *Whether any other party separately represented objects to the request, or why the moving party has been unable to determine any such party's position, 9th Cir. R. 31-2.2(b)(6).* Appellants' counsel has conferred with Appellee's counsel who does not oppose this request, and Appellants anticipate extending similar courtesies if they are requested.

16. *That the court reporter is not in default with regard to any designated transcripts, 9th Cir. R. 31-2.2(b)(7).* I am not aware of any reporters involved in this case that are in default.

I declare under penalty of perjury under the laws of the United States, that the foregoing is true and correct.

DATED this 28th day of March, 2023.

A handwritten signature in black ink, appearing to read 'Ryan E. Carreon', written in a cursive style.

Ryan E. Carreon

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2023, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the appellate CM/ECF system.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

Dated: March 28, 2023

Respectfully submitted,

/s/ Ryan E. Carreon

Ryan E. Carreon, Esq.

Cal. Bar No. 311668

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